

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1960

No. 639

GWENDOLYN HOYT, APPELLANT,

vs.

FLORIDA

APPEAL FROM THE SUPREME COURT OF THE STATE OF FLORIDA

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[fol. 1] [File endorsement omitted]

**IN THE CRIMINAL COURT OF RECORD OF THE
COUNTY OF HILLSBOROUGH AND STATE OF
FLORIDA**

The 3rd day of October, August Term, 1957.

Case No. 46464

THE STATE OF FLORIDA,

VS.

GWENDOLYN HOYT

INFORMATION FOR MURDER, 2ND DEGREE—Filed October 3,
1957

In the name and by the authority of the State of Florida:

Paul B. Johnson, County Solicitor for the County of Hillsborough, Charges that Gwendolyn Hoyt of the County of Hillsborough and State of Florida, on the 20th day of September, 1957, in the County and State aforesaid, by an act imminently dangerous to another and evincing a depraved mind regardless of human life, although without any premeditated design to effect the death of any particular individual, did unlawfully and feloniously make an assault on one Clarence Hoyt with a deadly weapon, to-wit: a baseball bat, a further description of which is to the Solicitor unknown, and in furtherance of said assault the said Gwendolyn Hoyt did strike, beat, bruise and wound the said Clarence Hoyt, thus and thereby inflicting on and upon the head, body and limbs of him, the said Clarence Hoyt, mortal wounds and hurts, of which said mortal [fol. 2] wounds and hurts the said Clarence Hoyt did then and there languish and on the 20th day of September, 1957 did die; and so the said Gwendolyn Hoyt did feloniously kill and murder the said Clarence Hoyt in the manner and form aforesaid, contrary to the form of the Statute in

such cases made and provided, and against the peace and dignity of the State of Florida.

s/ Paul B. Johnson, County Solicitor, Hillsborough County, Florida.

Duly sworn to by Paul B. Johnson. Jurat omitted in printing.

WITNESSES FOR STATE

Ford, Rivero, Littleton, P. D., Tampa, Fla.

Lt. William Armistead, Homestead Air Force Base.

Dr. Mauricio Rubio, Mason Smith Clinic.

Dr. Mason Trupp, 329 East Davis Blvd., Tampa, Fla.

Dr. Garth B. Dettinger, McDill Air Force Base Hospital.

[fol. 3] Mr. & Mrs. C. W. Denton, 4101 Bay Court, Tampa, Fla.

Gore, Nemeth & Mills, P.D. Tampa.

Dr. F. Karan, MacDill Field Base Hospital, MacDill FAB, Tampa, Fla.

John Davis & Mr. Howarth, B. Marion Reed Home.

Mrs. R. E. Olds—3003 Vanburen, Tampa, Fla.

Dr. Alfred E. Iwantsch, 45 Bridges Loop, Tampa, Fla.

Mrs. Maria Lopez, 3004 Meadows, Tampa, Fla.

[fol. 4] IN THE CRIMINAL COURT OF RECORD OF THE COUNTY OF HILLSBOROUGH AND STATE OF FLORIDA

MINUTE ENTRY OF—November 15, 1957

LIST OF JURORS DRAWN BY THE COURT

And the Court drew from the jury box the following names :

Lester B. Harris, Rt. 2, Box 1030, Tpa.

Geo. W. Surrency, Rt. 3, Plant City.

Mark Lee C. Crosby, 1021 E. Commanche.

Marvin Giddings, 1212 S. Albany.

Thomas Edison Bryant, Wimauma, Fla.

Daniel M. Lamoreaux, 6614 Central.

- Emmitte A. Moore, Jr., 127 W. Fern.
 Walter W. Smith, Rt. 1, Box 135, Dover.
 Robert A. Brown, 807 W. Idlewild.
 Robt. U. Ellis, 3913 Obispo.
 Wm. T. Thomas, P.O. Box 243, Lutz.
 Paul Prinzi, 3210 Horatio.
 Adrian D. Kent, 6801 Branch.
 Paul W. Palmer, Rt. 2, Box 581, Lutz.
 John H. Saunders, Jr., 558 Severn.
 Jos. Baker, Rt. 5, Box 410B, Tpa.
 Vincent D. Taylor, 3811 Paxton.
 Stanley L. Mautte, 2909 Bay View.
 Arthur E. Blount, 117 W. Haya.
 [fol. 5] Donald I. Simpkinson, 3703 Horatio.
 Howell P. Dale, 507 N. Walker St., Plant City.
 Thomas E. Higgins, 5121 N. Rome Ave.
 Derwood L. Carroll, 3913 Bay Court.
 Geo. A. Rodriquez, 1014 33rd Ave.
 Maurice C. Corma, 705 Lake Ave.
 Leo A. Lastinger, 312 E. Jean St.
 John H. Knight, Rt. 1, Box 12, Wimauma, Fla.
 Oscar L. Mitchell, 3907 W. Buffalo.
 Carl J. Rau, Box 8, Plant City.
 Edgar Parson, 2709 13th Ave.
 Ralph Sanders, 8205 Lynn Ave.
 Benj. H. Mendelsohn, 8516 Hammer.
 W. Lee Ward, 3328 N. San Miguel.
 Chas. R. Gist, 4105 Obispo.
 James W. Hingley, 9416 N. Blvd.
 Crecy H. Walters, P.O. Box 302, Plant City.
 Johnnie O. Driggers, 3606 W. Clark Cir.
 Ralph H. Kelley, 3911 El Prado.
 Leslie Legrande, 207 S. Fremont.
 Leon Oaks, 8313 Klondyke.
 Samuel R. Montgomery, Rt. 1, Ruskin.
 Robt. A. Dolan, 4619 Longfellow.
 Clarence B. Nuckols, 813 W. Mahoney St., Plant City.
 W. Chas. Scott, 5115 N. MacDill.
 John H. Shea, 3715 San Pedro.
 [fol. 6] Wm. E. Arnold, Rt. 6, Box 613 "G", Tpa.
 Elvin W. D'Angelo, 3013 Florida Ave.
 Noel J. Dupuis, 8708 Orangeview.
 Mathew Gomez, 504 E. Emily.

Buren Brown, 110 Drew St., Plant City.
 Dallas B. Hundley, 210 S. Woodlyn.
 Francis E. Hatchell, 2913 San Nicholas.
 Hugh H. Buerke, 907 Cornelius.
 John Steinlen, Rt. 5, Box 556, Tampa.
 Chas. F. Dolcater, 8313½ 12th St.
 Thaddeus W. McConnell, 8709 Greenwood.
 Herman E. Lenoir, 10714 Edgewater.
 Jos. C. Norton, 5608 Rivershores Way.
 J. Monroe McNatt, 915 W. Braddock.
 John G. Traina, 2136 Beach.

and ordered the Clerk to issue a venire returnable at 2:00 o'clock P.M. December 16, 1957, which was done.

[fol. 7] IN THE CRIMINAL COURT OF RECORD OF THE COUNTY
 OF HILLSBOROUGH AND STATE OF FLORIDA

AMENDED CHALLENGE TO JURY PANEL—Filed December 2,
 1957

Comes now the defendant, Gwendolyn Hoyt, by her undersigned attorneys and moves the Court to quash the jury panel which has been empaneled as prospective jurors in the above entitled matter upon the following grounds:

A. (1) That the names of eligible women were unlawfully, arbitrarily, systematically and intentionally excluded from the list that the above referred to jury panel was drawn from.

(2) That the present jury panel was drawn from a list compiled by the jury commission and approved by the Circuit Court on March 8, 1957, order approving same being recorded in Circuit Court Minute Book 118 at Page 448; that the aforesaid list consisted of 10,000 names; that the aforesaid 10,000 names included the names of approximately 10 to 15 women.

(3) That there was at the time of the compilation of said list by the jury commission approximately 275 women registered for jury duty with the Clerk of the Circuit Court as required by Florida Statute Section 40.01 (1) for the qualification of women jurors.

(4) That the jury commission failed to comply with

Florida Statute Section 40.01 (1) by unlawfully arbitrarily, [fol. 8] systematically and intentionally excluding the names of qualified women from the aforesaid jury list.

(5) That by reason of the aforesaid this defendant will be denied her constitutional rights under the Florida Constitution Declaration of Rights sections 11 and 12 and under the 5th, 6th and 14th Amendments to the Federal Constitution, if she is forced to proceed to trial with the present jury panel.

B. (1) That the above referred to list from which the present jury panel was drawn comprising 10,000 names was purportedly compiled by the jury commission in compliance with Florida Statute Section 40.01 (1) which is as follows:

“Grand and petit jurors shall be taken from the male and female persons over the age of twenty-one years, who are citizens of this state, and who have resided in the state for one year and in their respective counties for six months, and who are duly qualified electors of their respective counties; provided, however, that the name of no female person shall be taken for jury service unless said person has registered with the clerk of the circuit court her desire to be placed on the jury list”.

(2) That the last portion of the aforesaid Statute 40.01 (1)

“Provided, however, that the name of no female person shall be taken for jury service unless said person has registered with the clerk of the circuit court her desire to be placed on the jury list”

is contrary to the Florida Constitution Declaration of [fol. 9] Rights Sections 11 and 12 which are as follows:

Section 11—“In all criminal prosecutions, the accused shall have the right to a speedy and public trial, *by an impartial jury*, in the county where the crime was committed, and shall be heard by himself, or counsel, or both, to demand the nature and cause of the accusation against him, to meet the witnesses against him face to face, and have compulsory process for the attendance of witnesses in his favor, and shall be furnished with a copy of the indictment against him”.

Section 12—"No person shall be subject to be twice put in jeopardy for the same offense, nor compelled in any criminal case to be a witness against himself, *nor be deprived of life, liberty, or property without due process of law*; nor shall private property be taken without just compensation".

(3) That the aforesaid portion of the Florida Statute Section 40.01 (1)

"Provided, however, that the name of no female person shall be taken for jury service unless said person has registered with the clerk of the circuit court her desire to be placed on the jury list"

is contrary and in direct conflict with the Constitution of the United States of America, Amendments V, VI, and XIV which are as follows:

Amendment V—"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, *nor be deprived of life, liberty, or property without due process of law*; nor shall private [fol. 10] property be taken for public use, without just compensation"

Amendment VI—"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, *by an impartial jury of the State and district wherein the crime shall have been committed*, which district shall have been previously ascertained by law and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense".

Amendment XIV—"All persons born or naturalized in the United States, and subject to the jurisdiction there-

of, are citizens of the United States and of the State wherein they reside. *No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law*".

(4) That the aforesaid jury list of 10,000 names was taken by the jury commission from the qualified voters list of Hillsborough County, Florida; that the qualified voters list contained 114,237 individual names on June 1, 1957; that of the aforesaid number (114,247) approximately 40% or 45,698 were women.

(5) That the defendant is a woman charged with the second degree murder of her husband; that the facts are such that the killing of the deceased was done out of passion; that the defendant is entitled under the Florida and Federal Constitutions (supra) to be tried by a jury drawn from a list containing 40% female names; that the defendant [fol. 11-12] and will be discriminated against if forced to trial by jury with an all male panel who do not have the same passions and understanding of females and their feelings as other women would have.

Wherefore, the defendant prays:

(1) That pursuant to Florida Statute Section 913.01, the Court set a date for hearing and the taking of testimony upon the challenge to the jury panel and that the defendant be given an opportunity to present testimony and facts to prove said challenge.

(2) That the Court dismiss the jury panel and order the jury commission to compile a jury list in compliance with the valid Florida Statutes and the Florida Constitution Declaration of Rights sections 11 and 12 and the Federal Constitution 5th, 6th and 14th Amendments.

C. J. Hardee, Jr., Hardee & Ott, 308 Tampa Street, Tampa, Florida and Carl C. Durrance, 217 North Franklin Street, Tampa, Florida, Attorneys for Defendant. By: s Carl C. Durrance.

CERTIFICATE OF SERVICE (omitted in printing)

[fol. 13] IN THE CRIMINAL COURT OF RECORD OF THE
COUNTY OF HILLSBOROUGH AND STATE OF FLORIDA

No. 46464

THE STATE OF FLORIDA,

VS.

GWENDOLYN HOYT

Transcript of Hearing—December 5, 1957

This cause came on for hearing before the Honorable L. A. Grayson, Judge, in Chambers, upon Defendant's Amended Challenge To Jury Panel, on December 5, 1957, as follows:

APPEARANCES:

Hon. Harry M. Hobbs, Assistant County Solicitor, in behalf of the State;

Carl C. Durrance, Esq., 217 N. Franklin Street, Tampa, Florida, in behalf of the Defendant.

[fol. 14] Mr. Durrance: If your Honor please, this is an amended challenge to jury panel, the original challenge having been filed to the jury at the time that this case was set for trial. This is now set for trial on December 17. This is an amended challenge to this particular jury panel. In pursuance of that, if the Court so desires, I'll read it to the Court.

The Court: I'm reading it.

Mr. Durrance: Has your Honor read the full motion?

The Court: Yes.

Mr. Durrance: Your Honor please, this motion is set up in two parts. Part A: We feel that under that particular part of the motion, it will be necessary to take testimony of certain people. We have subpoenaed those people here and at this time we'll proceed to call them, if it's agreeable with the Court.

The Court: Go ahead.

Whereupon, JAMES H. LOCKHART was called as a witness by the defense and having been duly sworn, testified as follows:

Direct examination.

By Mr. DURRANCE:

Q. Please state your name.

[fol. 15] A. James H. Lockhart.

Q. Mr. Lockhart, will you describe the procedure—Do you hold any official position in the County of Hillsborough?

A. I'm a member of the Hillsborough County Jury Commission.

Q. A member of the Hillsborough County Jury Commission?

A. That's right.

Q. How long have you been a member of the Jury Commission?

A. Well, I was on for about twelve years and I was off four. I think I have been back on now about three, three-and-a-half, something like that.

Q. Were you a member of the Jury Commission on March 8, 1957?

A. That's right. Yes, sir.

Q. You were a member of the Jury Commission, then, that made up the present jury list from which this particular panel was drawn from, is that correct?

A. Yes, sir.

Q. All right. Will you then describe the procedure for making up that jury list to us?

A. Well, about two years ago, or more, the Legislature passed a law making a list of 10,000 names and the Circuit Judges told us we had to put a list in the box of 10,000 names each year. And when the Clerk—also give us help [fol. 16] from the Clerk of the Circuit Court to make up these lists that when they were made up two years ago, as the Clerk finished them, he give us a copy of them. We went over the list and checked them and sent them back and she compiled a list. Then, in '57, it was only about a little over 3,000 used in '56, therefore we had about 7,000 names left and we, she checked over the list to see if there was anybody had moved or died from the registration list. See, it had to be checked with the registration list.

Q. Now, Mr. Lockhart, do I understand that the Clerk made up the list and then submitted it to you? Is that the way it was prepared?

A. Yes, because two years ago, you know, we checked the list, see, those copies that were taken off the registration list, and we checked them. I remember, I checked them through the City Directory, checked and rechecked them.

Q. Now, how do you choose the individual names? On what basis are those chosen?

A. Well, they consider the age, the occupation, might be a freeholder, something along that line.

Q. All right. Now, when was the present list, that is, the one from which the jury panel has been drawn to try the present case which is set for December 17, when was that list compiled?

A. Well, it was compiled during the year. I think it [fol. 17] was put in the box sometime around February or March. The State Law says we have to have it in by March 31, I believe.

Q. Then, it would have been about March 8, 1957?

A. I think we put it in before then because it was up to the Judges of the Circuit Court.

Q. Now, on that particular list which you placed 10,000 names in the Jury Box, Mr. Lockhart, did the Clerk prepare that list for you? Did the Clerk of the Circuit Court prepare that list for you?

A. Help from the Clerk's office, the Clerk of the Circuit Court, made up the list, typewritten list.

Q. Was that list then submitted by the Clerk to you for your approval?

A. No. We give it to the Circuit Judges.

Q. But, did you go over the list yourself?

A. Yes, we went over. I checked, went through it, of course. We previously checked the names before, you know. Then, when the first list was made up of 10,000 names.

Q. Well, I don't quite understand what you mean by that, that you had previously checked it.

A. Well, as the list was made up, under that new law of 10,000 names, we got copies as it was made up and we took it and checked it. Mr. Duke was on the Commission

at that time and he checked part of it and I checked part of it.

[fol. 18] Q. In other words, you checked the original that was in that box, in other words, the first time you put 10,000 names in the box? You did check the list of 10,000, is that correct?

A. Prior to putting it in the box, yes.

Q. All right. Then, some of those names were still left in the box at the time that you refilled it on March 8, 1957?

A. Well, we don't refill the box or empty the box.

Q. Well, what do you do?

A. I think the Sheriff's office and the County Judge and someone else looks after that. I don't know. We give the list to the Circuit Judges and they approve it and then they turn it over to the Clerk of the Circuit Court, I believe.

Q. I see.

The Court: When you gave it to them, Jimmy, it's in a typewritten page with these names there in it?

The Witness: That's right.

Q. In other words, Mr. Lockhart, you just prepare the list?

A. That's correct.

Q. Is that correct?

A. And it has to be approved by the Circuit Judge.

Q. Yes, sir. All right. Now, this particular list that [fol. 19] was prepared on March 8, 1957, the same one that this particular panel was drawn from, what I want to get clear is whether or not the Clerk prepared that list and then submitted it to you for your approval?

A. We looked it over before she typed it up and then present it to the Judge, Circuit Judges. See, the list is practically the names were dwarn, I mean, made up in the year before because the Circuit Judges ruled that they had to be 10,000 names put in the box each year.

Q. All right, sir. But what I want to know, specifically, Mr. Lockhart, if I can, please, is this particular list, on March 8, 1957, was that tentatively prepared by the Clerk and then submitted to you for your approval along with Mr. Conner, the other Jury Commissioner?

A. Yes. It was made up, of course, it was made up

from the one the year before that we had already gone over.

Q. Made up from that list.

A. See, we have a box down there we keep the names in. As the jurors are pulled, they are transferred from that box into the other box, to show they are being drawn.

Q. All right, sir. How many names were placed on the list on March 8, 1957?

A. Approximately 10,000 names. We didn't count the exact number but we had it a little under 10,000 names because I understand the Judges said they didn't want to go over the amount.

[fol. 20] Q. How many women or female names went into this list?

A. On the 1957 list, it was ten, I believe.

Q. So, then, in this jury panel list which you prepared and from which this present panel was drawn from, there were ten women, or female names that went on that list, is that correct?

A. That's right.

Q. All right. How many eligible women or female names are there in the registration book in the Clerk of the Circuit Court's office left there for that purpose?

A. The Act was created in 1947, I believe. There have been registered since, about 220 names and from 1952, on, I don't believe there has been more than 35 names been put on the list.

Q. All right. Now, getting back to March 8, 1957, how many eligible female women were registered in that book?

A. Well, I don't know how many were qualified, but they have the names on there of about 220.

Q. Approximately 220?

A. As I say, from 1952, on, since I went back on the second time, there has only been about 35 that has registered with the Clerk of the Circuit Court.

Q. All right, sir. Now, were there any eligible female names left off of this jury list which you've prepared?

A. There probably were.

Q. On March 8, 1957?

[fol. 21] A. From the last four years, we have been averaging about ten to twelve on each list.

Q. All right. Why is that, Mr. Lockhart?

A. Because since 1952, there has only been about 30, 35 that's qualified to, I mean, went down and registered for jury duty. You don't have much to choose from.

Q. Well, now, how do you select women's names from that registration book?

A. Well, we just have to take the names on there, that's all.

Q. Well, you've used some system with reference to that book, do you not?

A. Well, we try to check them through. They did before this last year. I tried to check them through the City Directory. You'll find that a good many of the women folks now are over 65. In fact, one of them is approximately eighty.

Q. What I am trying to get at, Mr. Lockhart, is this. If there were only ten women's names, as you testified, went into the present jury list and there were at the time about 220 eligible women who had registered for jury service, why the difference between ten and 220 which were apparently eligible?

A. Well, they have been put over a spread of years.

Q. Well, how do you do that?

A. Well, every year, there is a new jury list and we [fol. 22] put on ten or twelve every jury list. In fact, along seven or eight years ago, it was pretty hard to see whether—the status changed so rapidly, it was pretty hard to know whether they would be qualified or not.

Q. Would I be correct, then, in saying that you omitted approximately 210 eligible women's names when you compiled this list?

A. I wouldn't say they were eligible because we didn't check them. We don't check every name on the registration books.

Q. I'm talking about this registration book in the Clerk of the Circuit Court's office, Mr. Lockhart, where the women are required to come there and register for jury duty?

A. You can say it's 220 names on that book. There is.

Q. All right. If there are 220 eligible women on that book—

A. I don't know if they are eligible or not.

Q. What I want to know, then, is why you picked just ten out of that 220 to go into this jury list?

A. Well, we picked—we have average, for the last four years, ten to twelve on each list.

The Court: Let's get off the record a minute.

(Discussion off the record.)

The Court: Go ahead.

Q. Mr. Lockhart, in making up this list, jury list, from [fol. 23] which the present panel was drawn, did you attempt to comply with Florida Statute, Section 40.01, sub-section (1), in making up that list?

A. Would you mind reading it to me?

Q. Well, that's the Statute, Mr. Lockhart, governing the qualifications for jurors and I will read it, if you like. Florida Statute, Section 40.01, sub-section (1), is as follows: "Grand and petit jurors shall be taken from the male and female persons over the age of twenty-one years who are citizens of this state and who have resided in the State for one year and in their respective counties for six months, and who are duly qualified electors of their respective counties, providing, however, that the name of no female person shall be taken for jury service unless said person has registered with the clerk of the circuit court her desire to be placed on the jury list." Now, what I am asking, Mr. Lockhart, is, did you purport to comply with that statute when you prepared this jury list?

A. Yes, sir.

Q. All right. Did you put in this list on March 8, 1957, any women or female's names who were registered voters but who had not registered with the Clerk of the Circuit Court?

A. If it was there, we didn't intend to. We checked the registration. The law requires that to be on registration. [fol. 24] Q. In other words, you would say that you did not?

A. Yes. That's right. I doubt what, with that small number of names. They were checked with the registration office.

Mr. Durrance: All right, sir. Your witness.

Cross-examination.

By Mr. Hobbs:

Q. How do you tell male from female on your jury list?

A. Well, all the females are supposed to be registered down in the Clerk's office. Then, they have a column in the registration book that says male or female.

Mr. Hobbs: That's all.

Mr. Durrance: That's all, Mr. Lockhart.

Whereupon, KATHERINE L. McPHILLIPS, was called as a witness by the defense, and having been duly sworn, testified as follows:

Direct-examination.

By Mr. Durrance:

Q. Please state your name.

A. Katherine L. McPhillips.

Q. Mrs. McPhillips, what is your employment?

A. I'm a clerk in the Clerk of the Circuit Court's office.

Q. Were you so employed on March 8, 1957?

A. Yes, I was.

[fol. 25] **Q.** How long have you been employed in the Clerk of the Circuit Court's office?

A. I'd say a year and a half. I believe it was in June, 1956.

Q. What are your duties with the Clerk of the Circuit Court's office? Let me ask you this question: Do you have any connection with the Jury Commission of Hillsborough County, in any way?

A. Yes, I do.

Q. Will you explain that to us?

A. Yes. I make up the list that goes into the jury box.

Q. All right. Now, on March 8, 1957, when the jury list was made up from which the present panel has been drawn, did you prepare that list?

A. Yes, I did.

Q. Will you tell us what procedure you used?

A. In making up the list?

Q. Yes.

A. Well, I used the list from my card index file that I'd made in 1956 and added approximately 2500 names more from Mr. Dekle's Registration Office List.

Q. All right. Then, what did you do with that list after you made it up?

A. I submitted the list to Mr. Lockhart.

Q. Did he approve this list that you submitted to him? [fol. 26] Did he approve it?

A. Well, he didn't say anything to me, one way or another, about it.

Q. I see.

By the Court:

Q. Did you get it back disapproved?

A. No, sir, I did not.

By Mr. Durrance:

Q. Now, let me ask you this, Mrs. McPhillips. In compiling that list, how many women's names went into that list?

A. Ten.

Q. How did you arrive at—strike that question, please. Mrs. McPhillips, I hand you a book here which purports to be a book containing the names of female—a book kept by the Clerk of the Circuit Court for the purpose of women to register in order to qualify for jury service. Is that the book which is kept by the Clerk of the Circuit Court of Hillsborough County for the registration of women jurors?

A. Yes, it is.

Q. All right. Did you use that particular book in making up the list which you submitted to Mr. Lockhart of the Jury Commission?

A. Yes, I did.

Q. How many eligible women are there in that particular [fol. 27] book, or were there, on March 8, 1957, we'll say?

A. Two hundred eighteen.

Q. And there were ten names, ten female names which went on to this jury list of 10,000?

A. Right.

Q. Why was there only ten out of the 218 placed on the list?

A. Well, the reason I placed ten is I went back two or three, four years, and noticed how many women they had put on before and I put on approximately the same number.

Q. Did you receive any instructions with reference to that from Mr. Lockhart?

A. Mr. Lockhart told me at one time to go back approximately two or three years to get the names because they were recent women that had signed up, because in this book, there are no dates at the beginning of it, so we can't—I don't know exactly how far back they do go and so I just went back two or three years to get my names.

Q. All right. Would you say, then, that there were approximately 208 eligible women whose names were left off of this particular jury list on March 8, 1957?

A. Approximately that, sir. Yes.

Mr. Durrance: I believe that's all from this witness. Do you have anything, Harry?

[fol. 28] Cross-examination.

By Mr. Hobbs:

Q. You say you added 2500 names to the list that you already had, is that right?

A. Yes, sir.

Q. Then, part of that 2500 was ten women's names, is that right?

A. Yes.

Q. At that time, you already had a list of approximately 7,500?

A. That's right. We had to have 10,000 altogether.

Q. How many women's names were in that 7,500?

A. Ten.

Q. How do you know it was ten in the 7,500?

A. Oh, you mean, how do I know there were ten left in the 7,000 names? Well, I'm not sure. I don't know.

Q. You don't know how many women's names were in that 7,500, do you?

A. No.

Q. All you know is that in putting up the additional 2500, you put ten women's names in it?

A. Yes.

By the Court:

Q. Had you made the list from which the first 10,000 were put in the box?

A. Yes, sir.

[fol. 29] Q. Well, you put approximately the same percentage of women in that you did in that last one?

A. Yes, sir.

Q. Then, there would have been the residue in that 7,000?

A. Oh, I see what you are getting at.

Q. There would be the residue of the ten that hadn't been drawn out?

A. There were ten left in the box.

Q. Well, you don't know what was in the box. There had been ten put in?

A. But I don't know how many were left.

Q. And these that hadn't been drawn out were still there?

A. That's right, sir.

Q. So, the residue of the ten that you put in there originally was still in there?

A. That's right, sir.

Q. And, then, you added ten more with the 2500?

A. No, sir. There were not ten more added.

Q. There were not?

A. There ten altogether that were on this 1957 list.

Q. This box, lady, has been filled twice, hasn't it?

A. That's right.

Q. All right. Were there 20,000 different names used, 10,000 each year?

[fol. 30] A. No, sir, there were not.

Q. Isn't this the way the thing worked? When you first had to put in 10,000, you put in ten. At the end of the year, about 3,000 had been used?

A. Yes, sir.

Q. You had the residue of the ten, of around 7,000?

A. That's right.

Q. You added 2500 more to that to bring it up in the neighborhood of 10,000 again?

A. That's right.

Q. In the 10,000 that you originally put in, there were ten women?

A. That's right, sir.

Q. In the 2500 that you added, were there any new women added?

A. No. There were no new women added.

Q. No new women added at all?

A. No. Just the ones that were in the box still of the 7,000.

Redirect examination.

By Mr. Durrance:

Q. So, then, on March 8, 1957, no women's names were added to this jury list?

A. Well, they weren't added, no. We just used the ones we had.

The Court: Now, wait a minute.

[fol. 31] By the Court:

Q. Did you put any more jury women into the 2500?

A. No, sir.

Q. Well, the answer was that they were not added?

A. No, sir.

Recross-examination.

By Mr. Hobbs:

Q. In putting this in March 8, you didn't pay a bit of attention to this list at all? You didn't use this list at all?

A. No. We just used the women that were left in the box.

Redirect examination.

By Mr. Durrance:

Q. In other words, you did not use this book which you have at the present time which the Clerk keeps downstairs for the registration of women who desire to serve on the jury? You did not use that book when you added these 2500 names on March 8, 1957?

A. No.

Mr. Durrance: That's all.

The Witness: Except—

Mr. Hobbs: Wait a minute.

Recross-examination.

By Mr. Hobbs:

Q. A minute ago you testified that each year you put [fol. 32] ten additional names in there because they had used ten before?

The Court: Female names.

Q. Female names.

A. Yes, sir.

Q. What did you mean by that? I don't understand that.

A. What I mean is that we had ten women in the 7,000 left that had not served. Had not served. So, we did not take their names out of the box, or out of the file that we use to compile the list and put them in a "Served" file. So, we still had ten ladies' names left in the box from the 1956 list.

By the Court:

Q. If they hadn't been drawn out?

A. That's right.

Q. You don't know what ladies' names were in the box, then?

A. I can't say, for sure.

Q. But you didn't add any new ones?

A. Now, to my knowledge, there were none. I would have to check it for sure. That was a year ago. Now, I would have to—I can't absolutely state, one way or another.

Q. Is the information available?

A. Yes, sir, it is. May I look in this?

Mr. Durrance: Sure. Sure. I want you to.

[fol. 33] A. Now, here is one lady that went in, again.

Q. Let's confine ourselves, now, to the 2500 that you added to bring this back up to 10,000. Was the one that you mentioned there added within the 2500?

A. You mean, the original list I made up of 10,000?

Q. Lady, I don't know what you call the original list. You have made up two lists of 10,000, haven't you?

A. Yes, sir.

Q. Only two, under this new jury law?

A. That's right, sir.

Q. We are speaking now of the second 10,000.

A. Yes, sir.

Q. That's the residue of the first ten, plus the 2500 odd that you put in?

A. Yes.

Q. That's the 10,000 we are talking about.

A. The second 10,000.

Q. Right.

The Court: Isn't it?

Mr. Durrance: Yes, sir.

The Court: That's the one that this jury came from.

Mr. Durrance: Yes, sir. That's the one we are interested in.

A. The only way I can be absolutely sure about that is to check.

[fol. 34] Q. Where would you check?

A. I would check against the 1957 jury list and against these names that signed up after—I mean, in 1956. You see what I mean?

Mr. Durrance: All right. Would you check that for us and submit that to us in writing in order that we may place it into the record?

The Witness: Yes, sir.

Mr. Durrance: Is that agreeable with you, Harry?

Mr. Hobbs: I don't know what she is going to submit in writing. I've no idea. I don't know how I can agree to it until I see the writing.

The Witness: One other reason why I have to check this, too. Another girl helps me with the jury list and whether she did or not, I'm not positive, either. That's another reason I'll have to check this.

By Mr. Hobbs:

Q. Do you still have a list of the people that you put in the jury?

A. Oh, yes.

Q. And on that list, do you have——

The Court: It wouldn't take you too long to find ten women in a crowd of a list of 2500, would it?

[fol. 35] The Witness: No, sir, it wouldn't take me any time at all.

Q. How would you determine whether they were male or female on that list?

A. The way I am going to determine whether I put, whether any women were put on in 1957 or not is by this book. If any of these names down here have been used on that 1957 list.

The Court: What you will do is go through the 1957 list and select the names that you suspect of being female and then check them against that book?

The Witness: That's right, sir. That's the only way I can determine.

The Court: Now, some of them, I can't tell. I have pulled them out and I can't tell, by the name, whether they are male or female. Of course, when they came in the court room, I readily caught on.

Mr. Durrance: How long would it take you to check that, Mrs. McPhillips?

The Witness: It would take me about ten minutes, by alphabetical order.

Mr. Durrance: Would you like to do that now and come back?

The Witness: Be glad to.

[fol. 36] Mr. Durrance: Is that all right?

The Court: It's all right for her to do it. Now, when she comes back, I won't be here.

The Witness: Do you want me to go down now and check this?

Mr. Durrance: I would like for you to check it, Mrs. McPhillips.

Mr. Hobbs: After she checks it, you and I may sit down and stipulate as to what her check showed.

The Court: Suppose you do that, then.

The Witness: All right, sir.

(The witness left the room.)

Whereupon, JOHN C. DEKLE, was called as a witness by the defense and having been duly sworn, testified as follows:

Direct-examination.

By Mr. Durrance:

Q. Please state your name.

A. John C. Dekle, Supervisor of Registration, Hillsborough County, Florida.

Q. Mr. Dekle, are you familiar, in your official capacity, with the number of voters in Hillsborough County at the present time?

A. Yes, sir.

[fol. 37] Q. How many are there?

A. At the present, the last count was in June of this year, 1957. It was a total of 114,247 grand total, qualified voters.

Q. Now, what ratio, Mr. Dekle, of women to men are there in the qualified voters list?

A. Well, a breakdown at that time shows about 60-40 ratio. There would be about 46,000 women registered of that total, 114,000. It would run about 60-40.

Q. So, there were approximately, your best estimation, 46,000?

A. Approximately 46,000 women registered.

Q. On what date was that, June?

A. June 1, 1957, was the last breakdown.

Q. Would that have varied any substantial difference on March 8, 1957? Would it have been practically the same?

A. It would have been the same. There wasn't any variation between March and June.

Mr. Durrance: It would have been no variation at all. Your witness.

Cross-examination.

By Mr. Hobbs:

Q. You don't know the percentage of women versus men living in Hillsborough County, do you?

A. No, I don't.

Q. You have no figures on that?

[fol. 38] A. No. All we have is on registration.

Mr. Hobbs: I have no further questions.

(The witness was excused.)

Mr. Durrance: Your Honor please, that's all the testimony which we have at this time. Of course, Mrs. McPhillips will have some additional testimony for us within a short time, apparently. Do you want to hear any argument at this time, or what?

The Court: If you want to argue.

(After hearing argument by counsel, the following occurred:)

STATEMENT BY THE COURT

The Court: As to the subdivision A of your motion or your challenge, according to the testimony, as I understand it, there are 68,000 eligible male jurors in the county and, assuming for our present purposes that the Statute requiring the registration of women who want to be jurors is a valid Statute, there are 275 eligible female jurors. Of the 10,000 in the box, there are approximately ten women and the balance are men. On the eligibility list, that would represent about 27 per cent of the eligible women and about 15 per cent of the eligible men, so I believe, percentage-wise, on Ground A, that there certainly isn't any discrimination of the nature of which you complain. Percentage-wise, [fol. 39] there are more women in the box or there were more women put in the box, however many there may or may not be now, percentage-wise, than there were men.

Now, you come to your proposition B, which is the invalidity of the Statute. I'm going to hold against you on that because if as basic a proposition as this attack is, it seems to me we ought to have the Appellate Court first to declare the act unconstitutional, if it is unconstitutional.

Throughout our entire history—and while some of our higher courts seem to pay no regard whatever to tradition, it's something you can't entirely disregard—women have been treated as superior to men, until they sought to get equal rights and got brought down to our level. They are now our equals and no longer our superiors. It may be that the Court will finally determine that that Statute is invalid. I don't think it is. I think it is a proper regulation from a standpoint of law. I think it's unwise, but that's a different thing from invalid. Frankly, I know of no reason why there should be any restriction at all upon women acting as jurors, any more than there is upon men. [fol. 40] But, I don't believe that the unwisdom of the Legislature is a matter which should go to the validity of a law and I am, therefore, going to deny your challenge in its entirety.

Reporter's Certificate to foregoing transcript omitted in printing.

[fol. 41] STATEMENT OF MRS. KATHERINE L. McPHILLIPS
AND CERTIFICATE THERETO

This is Katherine L. McPhillips and pursuant to the statement that I made in Judge Grayson's office the other day, I came down and checked my jury records and found that no names of women had been added to the 2500 names that were added to complete the 10,000 names of the 1957 jury list. In the case of Gwendolyn Hoyt.

STATE OF FLORIDA,

County of Hillsborough.

I, Virginia Toffaletti, do hereby certify that I was authorized to and did report in shorthand statement by Katherine L. McPhillips in reference to the case of the State of Florida v. Gwendolyn Hoyt \neq 46464, on December 10, 1957; and that the foregoing is a true and correct transcription of my shorthand report.

In Witness Whereof, I have hereunto affixed my hand this 10th day of December, A.D. 1957.

s/ Virginia Toffaletti, Official Court Reporter.

[fol. 42] IN THE CRIMINAL COURT OF RECORD OF THE COUNTY
OF HILLSBOROUGH AND STATE OF FLORIDA

MINUTE ENTRY OF ORDER DENYING AMENDED CHALLENGE
TO JURY PANEL—December 5, 1957

Come now Assistant County Solicitor, Harry M. Hobbs, and the defendant, Gwendolyn Hoyt, by her counsel, Carl Durrance and C. J. Hardee, Jr., and present to the Court Amended Challenge to Jury Panel, which the Court denied in words and figures as follows:

Motion Heard, Considered and Denied. Exception Noted this Dec. 5, 1957.

s/L. A. Grayson, Judge.

[fol. 43] IN THE CRIMINAL COURT OF RECORD OF THE COUNTY
OF HILLSBOROUGH AND STATE OF FLORIDA

ADDITIONAL CHALLENGE TO JURY PANEL—Filed December 12,
1957

Comes now the defendant, Gwendolyn Hoyt, by her undersigned attorneys and files this her additional challenge to the jury panel which has been empaneled as prospective jurors in the above entitled matter and says:

C. (1) That Florida Statute Section 40.10 which is as follows:

“The jury commissioners in counties described in 40.09 shall select and list 10,000 inhabitants of such county known or believed to be qualified under the law to be jurors who, even if exempt, have not filed a written claim of exemption from jury duty as hereinafter provided. No juror's name shall be drawn twice for jury duty until the above list has been exhausted. In making the selections and preparation of said lists, the jury commissioners may confer with the judge or one or more of the judges of the circuit court of such county, and shall have the power, without charge or cost, to examine, at any reasonable time all documents and records in the office of the clerk of the circuit court and of any other county officials as to persons who have been listed, summoned, not found, served or excused as jurors, and all books, records, and lists in the office of

the supervisor of registration or other county official containing the names of electors of such county. The clerk of the circuit court shall furnish or cause to be furnished the necessary clerical aid to the commission."

requires the jury commissioners to select and list 10,000 inhabitants for jury duty.

(2) That on December 5, 1957 James H. Lockhart one of the jury commissioners of Hillsborough County, Florida, testified before this honorable court that the jury list [fol. 44] from which the present jury panel was drawn was made up by an employee of the clerk of the circuit courts office of Hillsborough County and that said list was then submitted to the jury commission of Hillsborough County for their approval and was subsequently submitted to the circuit court of Hillsborough County by said commissioners. Copy of said testimony having been heretofore filed with this honorable court.

That on December 5, 1957 Kathryn L. McPhillips testified before this honorable court that she was employed as a clerk in the clerk of the circuit court's office of Hillsborough County and that she made up the list which went into the jury box from which the present panel was drawn. The said Kathryn L. McPhillips further testified that after she had made up the said list she submitted the same to the jury commission of Hillsborough County, Florida for their approval. Copy of said testimony having been heretofore filed with this honorable court.

That by reason of the foregoing the jury commissioners of Hillsborough County, Florida failed to comply with the Florida Law and Statutes and that by reason thereof the present jury panel should be quashed.

WHEREFORE the defendant prays that this honorable court quash the jury panel which has been empaneled as prospective jurors for the trial of this cause.

C. J. Hardee, Jr., Hardee & Ott, 308 Tampa Street,
[fol. 45] Tampa, Florida and Carl C. Durrance, 217
North Franklin Street, Tampa, Florida; Attorneys
for Defendant, By s/ Carl C. Durrance.

CERTIFICATE OF SERVICE (omitted in printing)

**[fol. 46] IN THE CRIMINAL COURT OF RECORD OF THE COUNTY
OF HILLSBOROUGH AND STATE OF FLORIDA**

**MINUTE ENTRY OF ORDER DENYING ADDITIONAL CHALLENGE
TO JURY PANEL—December 17, 1957**

Come now County Solicitor; Paul B. Johnson, and the defendant, Gwendolyn Hoyt, with her counsel, Carl Durrance, and C. Jay Hardee, Jr., and present to the Court Additional Challenge to Jury Panel, which the Court denied in words and figures as follows:

Motion Heard, Considered and Denied. Exception Noted this Dec. 17, 1957.

s/ L. A. Grayson, Judge.

**[fol. 47] IN THE CRIMINAL COURT OF RECORD OF THE COUNTY
OF HILLSBOROUGH AND STATE OF FLORIDA**

**MINUTE ENTRY OF ARRAIGNMENT AND PLEA—December 17,
1957**

And the defendant, Gwendolyn Hoyt, waived arraignment, and entered a plea of not guilty as charged in the information, and a plea of not guilty by reason of temporary insanity, as charged in the information.

**[fol. 48] IN THE CRIMINAL COURT OF RECORD OF THE COUNTY
OF HILLSBOROUGH AND STATE OF FLORIDA**

MINUTE ENTRY OF VERDICT OF THE JURY

Tampa, Florida, Dec. 19, 1957.

We, the Jury, find the defendant Gwendolyn Hoyt guilty of Murder, 2nd Degree as charged in the information. So say we all.

s/ W. LEE WARD, Foreman.

It is Considered, Ordered and Adjudged by the Court that the defendant, Gwendolyn Hoyt, is guilty as charged in the information, and the Court deferred the passing of sentence at present.

(Defense counsel given 15 days in which to file Motion for New Trial)

[fol. 49] **IN THE CRIMINAL COURT OF RECORD OF THE COUNTY
OF HILLSBOROUGH AND STATE OF FLORIDA**

JUDGMENT, ORDER AND SENTENCE—January 20, 1958

Come now County Solicitor, Paul B. Johnson, and the defendant, Gwendolyn Hoyt, with her counsel, Carl C. Durrance and C. J. Hardee, Jr., and having been heretofore convicted by a jury as charged in the information, and having been adjudged guilty by the Court as charged in the information,

Now on this day came in person the defendant, Gwendolyn Hoyt, and being asked by the Court whether she had anything to say why the sentence of the law should not now be pronounced upon her, says nothing.

It is therefore, the Judgment, Order and Sentence of the Court, that you, Gwendolyn Hoyt, for the crime of which you have been and stand convicted, be imprisoned in the State Penitentiary of the State of Florida at hard labor for a period of Thirty (30) years, from date of your delivery to the officers thereof.

[fol. 50] **IN THE CRIMINAL COURT OF RECORD OF THE COUNTY
OF HILLSBOROUGH AND STATE OF FLORIDA**

**ASSIGNMENTS OF ERROR AND GROUNDS OF APPEAL—Filed June
5, 1958**

Now comes the defendant, Gwendolyn Hoyt, by her undersigned attorneys, within the time fixed by order of the Court, and filed this her assignments of error and grounds of appeal, intended to be relied upon in the Supreme Court, as follows:

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4. The trial court erred in denying the defendant's amended challenge to the Jury Panel upon the grounds stated in said challenge.

5. The trial court erred in denying the defendant's additional challenge to the Jury Panel upon the grounds stated in said additional challenge.

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[fol. 52] IN THE SUPREME COURT OF FLORIDA, JULY TERM,
1959

Case No. 29,966

GWENDOLYN HOYT, Appellant,

VS.

THE STATE OF FLORIDA, Appellee

An Appeal from the Criminal Court of Record for Hillsborough County, L. A. Grayson, Judge.

C. J. Hardee, Jr., of Hardee & Ott and Carl C. Durrance, for Appellant.

Richard W. Ervin, Attorney General and George R. Georgieff, Assistant Attorney General, for Appellee.

OPINION FILED DECEMBER 2, 1959

DREW, J.

Gwendolyn Hoyt was indicted for second-degree murder of her husband Clarence Hoyt. She pleaded not guilty and not guilty by reason of temporary insanity, was tried and a verdict of guilty as charged was rendered by the jury.

The homicide occurred at the parties' home when appellant, after prolonged marital discord and alleged infidelities, called her husband from his military station in another city by a false report of injury to their young son. She was unable to salvage their relationship by any means, when she was so informed by the deceased in a final and [fol. 53] unequivocal fashion at the unfortunate moment when she was disposing of a damaged baseball bat, the fatal blows were struck. Immediate medical attendance could not repair the extensive head injuries which resulted in death the following day. Appellant gave a full account of events, which are not materially in dispute, indictment and trial followed in due course, and this appeal ensued.

By challenge to the all-male jury panel the appellant raised an issue as to the validity or constitutionality of Section 40.01 (1), F.S.,¹ insofar as it provides that, while

¹"40.01 *Qualifications and disqualifications of jurors.*—

"(1) Grand and petit jurors shall be taken from the male and female persons over the age of twenty-one years,

jurors are to be taken from male and female electors, "the name of no female person shall be taken for jury service unless said person has registered with the clerk of the circuit court her desire to be placed on the jury list." The validity of the statute was sustained by the trial court. Jurisdiction of this Court is invoked to review that judgment as one "directly passing upon the validity of a state statute . . . or construing a controlling provision of the Florida or Federal Constitution."²

[fol. 54] The record reflects that the list of names from which the venire was chosen did contain some names of women who had registered for jury service, and that the number so included was proportionately at least a fair representation of the total number of eligible women registered for jury service. The complaint, therefore, is that the law itself, by imposing upon women a burden (voluntary registration) not imposed upon men as a requirement for being called to jury service, operates to deprive the defendant of the "impartial jury" required by Section 11, Declaration of Rights, Florida Constitution, or of "equal protection of the laws" guaranteed by Amendment XIV, United States Constitution.

Neither contention can be sustained. Courts, under laws making women eligible for jury service, have condemned the exclusion of eligible women from a jury by arbitrary administrative action, noting in this respect that their exclusion "may indeed make the jury less representative of the community than would be true if an economic or racial group were excluded."³ We find no instance, however, where a court has overruled a legislative determina-

who are citizens of this state, and who have resided in the state for one year and in their respective counties for six months, and who are duly qualified electors of their respective counties; provided, however, that the name of no female person shall be taken for jury service unless said person has registered with the clerk of the circuit court her desire to be placed on the jury list."

² Art. V, Sec. 4(b), Constitution of the State of Florida; Rule 2.1 a (5) (a), Fla. Rules of Appellate Procedure.

³ *Ballard v. U.S.*, 329 U.S. 187, 67 S.Ct. 261, Anno, 166 A.L.R. 1422, 91 L.Ed. 181.

tion, or declared invalid a constitutional provision, that women as a class should be subject to different treatment or regulations, such as those here involved, with respect to jury service. The prohibition is against the enactment or application of laws to single out a class for different treatment "not based on some reasonable classification" or basis.⁴ All such decisions recognize the fact that "circumstance or chance may well dictate that no persons in a certain class will serve on a particular jury or during some particular period," and that a defendant's only right is to be "tried by juries from which all members of his [fol. 55] class are not systematically excluded"—a right to juries fairly selected from among all qualified or eligible persons.⁵

None of the later opinions either expressly or impliedly abandons the early pronouncement that within certain limits the law may prescribe qualifications for jurors "and in so doing make discriminations. It may confine the selection to males, to freeholders, to citizens, to persons within certain ages, or the persons having educational qualifications."⁶ Provisions for absolute ineligibility or general exclusion of women from jury service were, of course, the universal rule in the past, grounded historically, we believe, upon the inconsistency of such demands with their role in society.⁷

From the established precedent that women as a class may be excluded altogether from this particular civic labor without depriving a defendant of any constitutional rights, it logically follows that a rule or regulation of their service is not objectionable merely because it may incidentally operate to limit the proportion of women on juries. Even if it be conceded that an impartial jury, or due process of law, includes the concept of a "representative"

⁴ *Hernandez v. Texas*, 347 U.S. 475, 74 S.Ct. 667; *Thiel v. Southern Pacific Company*, 328 U.S. 217, 66 S.Ct. 984.

⁵ *Hernandez v. The State of Texas*, *ibid.*

⁶ *Strauder v. West Virginia*, 100 U.S. 303, 25 L. Ed. 664. *Fay v. New York*, 332 U.S. 261, 91 L. Ed. 2043.

⁷ *Hall v. State*, 136 Fla. 644, 187 So. 392; *Bacom v. State (Fla.)*, 39 So. 2d 794; *Anno*. 157 A.L.R. 461.

jury, one is entitled under all the cited cases only to attack provisions which limit unfairly, or without a reasonable basis, his opportunity to obtain such a jury. The statute under consideration does not, in our opinion, make such an arbitrary classification or discrimination.

[fol. 56] The same functional rationale mentioned in connection with the former exclusionary rule will sustain a statutory rule, such as our present law,⁸ against compulsory service after removal of eligibility barriers. Whatever changes may have taken place in the political or economic status of women in our society, nothing has yet altered the fact of their primary responsibility, as a class, for the daily welfare of the family unit upon which our civilization depends. The statute, in effect, simply recognizes that the traditional exclusion was based not upon inherent disability or incapacity but upon the premise that such demands might place an unwarranted strain upon the social and domestic structure, or result in unwilling participation by those whose conflicting duties, while not amounting to actual hardship, might yet be expected, as a general rule, to affect the quality of their service as jurors. The law vests in the individuals concerned, as those best qualified to judge, the right to decide without compulsion whether such service could be rendered without risk of impairment in their more vital role. There is an obvious distinction between such a legislative classification or rule of privilege and the case of a blanket administrative exclusion of an eligible class for supposed hardship.⁹

With respect to other objections to the manner in which the jury list was compiled, appellant has failed to show that the requirements of Chapter 40, F.S., were violated in any way. That law contains no positive mandates that [fol. 57] selections be made in any particular proportions, and the evidence does not indicate anything resembling a systematic exclusion of eligible registered female electors. Likewise the statute clearly contemplates the use of clerical assistance in the preparation of the list and does

⁸ See note (1) *supra*.

⁹ See *Thiel v. Southern Pacific Company*, 328 U.S. 217, 66 S.Ct. 984.

not require more than the personal supervision and review exercised by the commissioners in this case.¹⁰

The assertion as made that the procedure followed in compilation of the jury list amounted to unlawful delegation of the commissioner's discretionary powers and violated certain principles referred to in our decisions. First, "they cannot by subsequently ratifying a selection made by some other person render the selection valid."¹¹ An investigation of the decisions upon which this text statement is based fails to reveal any case in which a court has disapproved the typing of names by an employee from specified registration lists at the direction of the commissioners, in the circumstances of this case.¹² The evil against which the rule is obviously directed is the choice of names by any "other person" in the character of a volunteer or one having even a potential interest in the procedure. The transcription of names from a specified register under direction of law or order of the commissioners does not, upon any rational theory, amount to "selection" by the transcriber or clerk, but rather the selection is in fact made by the officials directing the procedure and approving the list compiled. Similarly, their action is "in concert" if the certification of the list and the procedure by which it is produced is the result of their combined and cooperative efforts, as opposed to a list "drawn by some of the county commissioners in total [fol. 58] disregard of the counsel and advice of others."¹³ Certainly the decision first above cited to the effect that a challenge may be based upon participation by parties, other than clerical assistants, who are alleged to be prejudiced to defendant and taking an active part in the prosecution of the cause, is not inconsistent with the conclusion reached in this case.

The appellant further contends that the court erred in

¹⁰ Cf. *Chance v. State*, 115 Fla. 379, 155 So. 663, construing Sec. 4444, C.G.L. 1927.

¹¹ *Ibid.*, at page 664.

¹² 50 C.J.S., *Juries*, Section 158, p. 882; cases collected 92 A.L.R. 1109, 1112.

¹³ *State ex rel. Jackson v. Jordan*, 101 Fla. 616, 135 So. 138. Cf. *State v. Walters* (Idaho), 102 P. 2d 284.

denying motion for directed verdict of acquittal upon the medical testimony as to insanity; and in refusing to find upon the evidence that the charge should as a matter of law be reduced to manslaughter. On these issues it will suffice to say that a jury question was, under former decisions of this Court, plainly presented.¹⁴ There was no conflict in respect to appellant's medical history, reflecting affliction with epilepsy from an early age. But, while medical experts were not in full accord on all points, there was ample testimony from which a jury could find that there existed no disabling malfunction at the time of the homicide under the established rules for determination of criminal responsibility.¹⁵

Among the other points urged by appellant are objections to comments by court and counsel in the course of trial before the jury; objections to latitude permitted in cross examination of appellant; and alleged error in submitting the form of verdict "not guilty by reason of insanity" upon the plea of temporary insanity entered in the cause. We conclude from an exhaustive consideration of [fol. 59] the record in these respects that no prejudicial error was committed.

The objections to "hearsay" are apparently based upon the court's alleged error in admitting into evidence a memorandum made by a witness for the prosecution, Mrs. Edna Leonard, in the course of her business employment by a baby-sitting agency. Her testimony was simply that on a specified date she had occasion to make a record of a call for a baby-sitter, and (it was only upon cross examination that the caller was identified as a man) there appeared upon the face of the note the name "A. H. Bibby," a street address which was that of defendant, and the name "Mrs. Ellen Osteen," together with the name "La Motte" subsequently identified as the sitter sent on this job. Mrs. La Motte then testified that she was sent on the date in question to the specified address to baby-sit for a Mrs. Osteen, and that the woman who admitted her, and employed her to remain with a child during her absence with a man until 5:00 a.m., was the defendant.

¹⁴ See *Warner v. State* (Fla.), 84 So. 2d 314.

¹⁵ *Ibid.*

The testimony in this regard was clearly within the scope of rebuttal to defendant's line of defense in general, and her statements in particular that she did nothing to contribute to the deterioration of her marital relationship, that "all I wanted to do is go live with him . . . All I did was wait for him. . . ." Evidence for the defense was directed showing a course of events affecting the marital relationship and producing in defendant such a state of mind as to relieve her from criminal responsibility for her acts. In this situation evidence of other events vitally affecting the marital relation, and bearing upon her alleged state of mind, was properly admitted in impeachment. The collateral issue as to use of fictitious names arose unavoidably in the course of the witnesses' report of the incident, and the disputed memorandum did not put before the jury any material information other than that contained in other admissible testimony.

Assuming without conceding any merit in the remaining [fol. 60] contentions, that the instructions did not specifically cover evidence of a prior conviction, and that there was error in qualifying a juror who was under prosecution for a federal offense, these cannot avail the appellant in this case who, having full knowledge or notice in both instances, failed to object or raise an issue in a proper and seasonable fashion.¹⁶ Moreover there is no showing, or assertion, that under the circumstances any actual bias resulted.

Affirmed.

Terrell, Roberts, Thornal and O'Connell, JJ., concur.

Thomas, C.J., and Hobson, J., concur in part and dissent in part.

[fol. 61] **Hobson, J., concurring in part and dissenting in part.**

Although I agree with that portion of the majority opinion which holds that § 40.01(a), F.S., is valid and constitutional, I cannot agree with the judgment of affirmance

¹⁶ See, 918.10 (4), F.S. *Brumke v. State*, 160 Fla. 43, 33 So. 2d 226. See also *Ex parte Sullivan*, 155 Fla. 111, 19 So. 2d 611.

because of my belief that harmful and, therefore, reversible error has been clearly demonstrated.

The facts delineated in the majority opinion are accurate, but do not, as I see it, limn the true picture painted by the entire record of the testimony. The following facts appear to be undisputed:

Appellant, Gwendolyn Hoyt, was tried and convicted for the second degree murder of her husband by hitting him over the head with a baseball bat. The deceased was an Air Force Captain. He and appellant were married a number of years and had an eight year old son. They had been divorced once some twelve years ago and remarried. The deceased had for some time been unfaithful to his wife. Appellant has had epilepsy since age 20 (she is now 33 years old). This epilepsy has resulted in rather severe permanent damage to the temporal and parietal lobes of the left side of her brain. This portion of the brain is that which largely controls one's emotions. This damage becomes more apparent when appellant is under severe emotional tension or stress. All of which was known to the deceased.

Approximately a year and a half prior to the homicide, deceased was transferred from Macdill Field in Tampa to Homestead Air Force Base south of Miami. Appellant wanted to move, with their son, to Homestead to be with or near her husband. For the first eight or nine months the deceased spent every weekend and all his leave time in Tampa with his wife and son.

In the early part of 1957, the deceased suddenly changed his habits and began cutting his weekend visits short, failing to come home during his leaves, receiving strange telephone calls while at home, coming home with lipstick on his shirt, [fol. 62] washing his clothes immediately upon arrival at home, even at 3 or 4 o'clock in the morning, and doing other acts which were understandably upsetting to appellant. Appellant pleaded with deceased to let her and their son move to Homestead, but to no avail. She drove to Homestead twice during July and August to implore deceased to move her and their son down there, and both times he promised to do so but failed to keep his promise either time, although his conduct continued as before.

The appellant last heard from deceased, prior to the day of the homicide, on September 6th. She attempted repeat-

edly to contact him by telephone without success, and finally sent word on September 18th that their son was dying, which was untrue. Appellant testified she hoped this would bring her husband home. The deceased came home on September 19th, and the appellant did everything in her power during that day to make him happy and to reconcile any differences they might have had. That night she dressed in a sheer nightgown for the obvious purpose of creating a love-making atmosphere in which they could discuss their differences. However, the deceased spurned his wife, seized a pillow and lay down on the couch in the living room, refusing to discuss any problems with her.

Earlier that day a broken baseball bat had been brought by their boy from the yard into the house. Appellant decided to carry the splintered bat to the garbage can. At this juncture because of her husband's sudden, complete and final rejection of her efforts toward revitalizing the marriage, she became emotionally upset, as would forsooth even a *normally stable* wife under such circumstances. The record clearly shows Mrs. Hoyt was far from "normally stable", indeed she was, at least, neurotic if not psychotic.

The oft repeated quotation "Heaven has no rage like love to hatred turned, Nor hell a fury like a woman scorned" has been accepted as apodictic throughout the ages. In her distraught condition appellant struck deceased numerous blows upon his head, inflicting injuries from [fol. 63] which he died the next day. Thereafter appellant had to be kept in the psychiatric ward of Tampa General Hospital for almost two weeks.

Appellant raises several questions. She invokes the jurisdiction of this court, attacking the constitutionality of that portion of Section 40.01 (1), Florida Statutes, which provides that:

"... no female person shall be taken for jury service unless said person has registered with the clerk of the circuit court her desire to be placed on the jury list."

The trial court ruled directly that the statute was constitutional, and appellant is properly before this court.

There is one error assigned which I think without doubt requires the reversal of the judgment of the lower court. Appellant went out on a date with a man about one week

prior to the homicide and did not return to her home until the wee hours of the morning. This man, out of the presence of appellant, called a babysitting agency and ordered a baby sitter sent to appellant's house to stay with appellant's young son. He also, and without appellant's knowledge, gave the agency a false name for appellant. The trial court, over objection of defense counsel, permitted the state to question appellant about this date and to produce the purely hearsay testimony of the ladies of the babysitting agency as to their conversations with the man and with each other as to the false name. This testimony had the sole and devastating effect of, at least, permitting the jury to infer that appellant was a woman of bad character, a prevaricator and equally as guilty as was her husband of infidelity. Although her character was never placed in issue. The man was not called to testify. I can only reach the conclusion that this testimony was intended by the county solicitor to prejudice the jury against her, and it may well have had such effect.

Although it is suggested that this cross-examination was [fol. 64] in rebuttal of the defendant's testimony in and by which she depicted her husband as a flagrant philanderer, it does not occur to me that this was proper rebuttal but was nothing more nor less than recrimination.

The law in this state upon this subject is in accord with all other jurisdictions. We said in *Mann v. State* (Fla., 1886), 22 Fla. 600, 606, 607:

“Proceeding then to consider what has been settled in this matter, I think we may state the law in the following propositions:

“1. It is not permitted to the prosecution to attack the character of the prisoner, unless he first puts that in issue by offering evidence of his good character.

“2. It is not permitted to show the defendant's bad character by showing particular acts.

“3. It is not permitted to show in the prisoner a tendency or disposition to commit the crime with which he is charged.

“4. It is not permitted to give in evidence other crimes of the prisoner, unless they are so connected

by circumstances with the particular crime in issue as that the proof of one fact with its circumstances has some bearing upon the issue or trial other than such as is expressed in the foregoing three propositions.

.

“It is quite inconsistent with that fairness of trial to which every man is entitled that the jury should be [fol. 65] prejudiced against him by any evidence except what relates to the issue; above all, should it not be permitted to blacken his character to show that he is worthless, to lighten the sense of responsibility which rests upon the jury, by showing that he is not worthy of painstaking and care.’ ”

And in *Jordan v. State*, (Fla., 1932), 107 Fla. 333, 144 So. 669, 670, we stated:

“It is only permitted to interrogate witnesses as to previous convictions, not more former arrests or accusations, for crime. The defendant as a witness in his own behalf, while subject to legitimate cross-examination, just as is any other witness, does not lose his status or character as a defendant on trial, whose character or reputation it is not permitted to the prosecution to attack, under the guise of a pretended questioning on cross-examination, the principal effect of which is calculated to be an attack on character or reputation of the accused as such, so as to induce a more ready belief that he is guilty of the charge on which he is being tried.”

In my judgment the majority opinion has repudiated and receded from the rule of law announced in the above quoted cases, without expressly saying so.

In this case, even though the defendant's character was not in issue, the prosecutor was permitted to question the defendant about her conduct on one occasion. Such questioning [fol. 66] was obviously intended to inflame and prejudice the jury. Further, the conduct of the defendant did not even amount to an offense, let alone a conviction, and was totally unconnected with the offense charged. The prosecutor was also permitted to introduce hearsay testimony, and

hearsay testimony twice removed, which would indicate that appellant had used a false or assumed name for an ulterior purpose wholly unrelated to the offense charge. A conviction based thereon cannot stand.

Appellant further contends that the jury list was improperly made. The facts show that the two jury commissioners for Hillsborough County used a lady clerk, assigned to them by the Clerk of the Circuit Court, to help prepare the list of names of persons to be placed in the jury box. A jury commissioner, as well as the young lady, testified that she selected the names for the jury list from the city directory and other sources and submitted the tentative list of names to the jury commissioners, who divided the list in *half* and each checked only *one-half* the names on the list. The list was then submitted to the circuit judges and thereafter prepared in final form and placed in the box.

Thus, it is seen that the jury commissioners did not *select* the names to go in the box, nor did they each affirm the entire list. Assuming arguendo that confirmation is sufficient, it is quite evident that such affirmation was not of the entire list but only one-half of such list by each commissioner.

The two jury commissioners for Hillsborough County, appointed by the Governor, have a single statutory duty, and that is to personally and in concert, exercise their discretion in selecting the names of persons to be placed in the box for jury duty. This they plainly did not do.

The law on this subject is as we stated in *Chance v. State* (Fla., 1934), 115 Fla. 379, 155 So. 663, 664:

"The county commissioners who are authorized to [fol. 67] make selections of qualified persons for jury duty 'cannot delegate that duty to any other person, but must themselves make the selection, and they cannot by subsequently ratifying a selection made by some other person render the selection valid. Moreover, the selection must be made by the board as a whole, and not as individuals.' 35 C.J. 262."

See also *State ex rel. Jackson v. Jordan* (Fla., 1931), 101 Fla. 616, 135 So. 138. This is the general law prevailing in all jurisdictions, and I can find no authority to the contrary, nor has the majority opinion cited any.

I have not overlooked the contention of the State that in the case of *Chance v. State*, 115 Fla. 379, 155 So. 663 (Fla., 1934), we were dealing with Section 4444 (2772) Compiled General Laws when we ruled that the county commissioners were required *personally* to select and make out a list of the persons who were to serve as jurors and that said law has been amended by adding thereto the sentence:

“The Clerk of the Circuit Court shall furnish or cause to be furnished the necessary clerical aid to the commission.”

The legislature is presumed to understand, and to know how to express itself by use of, the English language and had that body intended that the “clerical aid”, prescribed by the last sentence of Section 40.10, Florida Statutes, should perform the *duties* of the jury commissioners it could, should and would have said so. This the legislature did not do. It simply provided for “necessary clerical aid” but certainly did not grant to such person or persons the power to function in the place and stead of the jury commissioners. Moreover, as aforestated, the jury commissioners did not personally and individually examine or *ratify* the *full* list of jurors prepared by their “clerical aid” but each inspected only one-half of such list. It is crystal clear that the jury commissioners did not personally prepare the jury list. It may be true that the young lady—the clerical assistant—was present and took part “in the solemn duty of selecting names for jury lists” but it is even more certain that she, rather than the jury commissioners, actually prepared the jury list.

It is my opinion that our decision in the case of *Chance v. State*, *supra*, is applicable to Section 40.10 Florida Statutes and controlling herein.

For the reasons above stated, I respectfully dissent from the majority opinion.

Thomas, C. J., concurs.

[fol. 69] IN THE SUPREME COURT OF FLORIDA, JULY TERM
A.D. 1959

GWENDOLYN HOYT, Appellant,

VS.

THE STATE OF FLORIDA, Appellee

JUDGMENT — December 2, 1961

This cause having heretofore been submitted to the Court upon the transcript of the record of the judgment herein, and briefs and argument of counsel for the respective parties, and the record having been seen and inspected, and the Court being now advised of its judgment to be given in the premises, it seems to the Court that there is no error in the said judgment; it is, therefore, considered, ordered and adjudged by the Court that the said judgment of the Circuit Court be and the same is hereby affirmed; it is further ordered by the Court that the Appellee do have and recover of and from the Appellant costs in this behalf expended, herein taxed except the \$25.00 filing fee which has been paid by the Appellant, and that all costs shall be taxed in the court in which the appeal was entered, all of which is ordered to be certified to the Court below.

The Opinion of the Court in this cause prepared by Mr. Justice Drew was this day ordered to be filed.

[fol. 70]

Corrected Copy

IN THE SUPREME COURT OF FLORIDA JANUARY TERM, A.D. 1960

Case No. 29,966

GWENDOLYN HOYT, Appellant,

vs.

STATE OF FLORIDA, Appellee

ORDER DENYING PETITION FOR REHEARING—April 20, 1960

Per Curiam:

On consideration of the Petition for Rehearing filed by Attorneys for Appellant,

It is ordered by the Court that the said petition be, and the same is hereby, denied.

Terrell, Roberts, Drew, Thornal and O'Connell, JJ., concur.

Thomas, C. J., dissents.

Hobson, J., dissents with opinion.

[fol. 71] **DISSENTING OPINION ON PETITION FOR REHEARING**
—Filed April 20, 1960

Hobson, J., dissenting:

Upon a reconsideration of this case on petition for rehearing, I have concluded that the portion of Section 40.01 (1), Florida Statutes, which limits female jury duty to volunteers is unconstitutional. It places an undue burden upon women who otherwise are qualified for jury service which is not demanded of others so situated.

The question how can Gwendolyn Hoyt (appellant herein) complain, naturally arises. The answer is simple. She was accused of having committed a felony and, as will be demonstrated hereinafter, she had only a *slight* chance of [fol. 72] securing even one of her own sex to sit in judgment upon her. She was not confronted by a jury of her peers — no member of the jury was in the feminine category.

No one in this enlightened age would question the fact that if a limitation such as is placed upon women by our statute with reference to jury service were engrafted into

our statutory law in regard to some of the so-called minority groups comprising our citizenry, it would be stricken down as violative of constitutional guarantees of due process and equal protection of the law.

It might be said that if *all* persons eligible to sit as jurors would be called to perform such duty only upon volunteering, that such an act would be constitutional. However, the situation thus developed would be gauche, as well as impracticable. As a presiding judge of one of the highest *nisi prius* courts in this state for more than twenty years, I learned that those who seek to be excused from jury service are, generally speaking, the best qualified to perform such duty. If volunteering were a prerequisite for jury duty we would have only those persons who might be described as professional jurors—individuals who might be interested in the outcome of a given case or who, with nothing else to do, would have their attention directed toward the few dollars which are provided by law for such service.

Trial by a jury of one's peers may not be the best method of deciding questions of personal liberty or of property rights which could be envisaged, but until the minds of a free people develop a better system it must be held inviolate and protected at every turn. No valid reason exists for limiting jury service to women who volunteer. Trial judges have the same broad discretion to excuse women with pressing duties at home as to excuse men with pressing business commitments. Moreover, since the advent of woman suffrage and the entry, in this era of modernity, of untold numbers of American women into all fields of business and professional life, the reason given¹ for excluding them [fol. 73] from jury service no longer exists, nor does that or any other reasonable basis which I can envisage exist to justify the provision of our statute limiting female jury duty to volunteers.

It would appear, from the opinion of the majority, that jury trial is a privilege which may be limited or discarded by the legislature. Such is not the case where criminal trials are involved. The founders of this nation were so disturbed by abuses of the sovereign in this respect that

¹ Women are primarily homemakers and should not be diverted from their duties as such.

the right to trial by jury was *guaranteed* to all defendants in criminal cases (6th Amendment, U. S. Constitution), and our own Constitution adopted this guarantee as a part of our declaration of Rights (Section 11, Florida Constitution).

Here, under the statute, the names of only ten women were included among the 10,000 names placed in the jury box in 1956, and none were among the 2500 names added to the box in 1957 because *none were drawn out* during the entire year 1956. Thus, while .40 or 40% of the qualified jurors in the county were women, only .001 or one-tenth of 1% of the names placed in the jury box were women.

There can be no question that women as a class have been discriminated against by the statutory limitation.

The majority suggests that, while administrative discrimination is unconstitutional, legislative discrimination is not, and quotes a passage from *Hernandez v. Texas*, (1953), 347 U. S. 475, 74 S. Ct. 667, 98 L. Ed. 866, purporting to support this view. In fact, *Hernandez v. Texas*, *supra*, constitutes the most recent authority for the opposite conclusion. There the U. S. Supreme Court held, in a case involving discrimination against persons of Mexican descent for jury service, that when any distinct class in the community is singled out by the State, for different treatment not based upon some reasonable classification, "whether acting through its legislature, its courts, or its executive or administrative officers" then "the guarantees of the Constitution have been violated."

Again, the majority opinion states that since "some" women might be called for jury service under the statutory [fol. 74] system, there is no unconstitutional exclusion of "all" women. In *Thiel v. Southern Pacific Company*, (1945) 328 U.S. 217, 66 S. Ct. 984, 90 L. Ed. 1181, 166 A.L.R. 1412, the U. S. Supreme Court held that the exclusion of a distinct and substantial class in the community (in that case daily wage-earners) "either in whole or in part" could not be tolerated.² Indeed, in *Hernandez v. Texas*, *supra*, Mexicans were not entirely excluded from jury service.

In our statute under attack the legislature has qualified

² Here court discussed discretion of the trial judge to excuse in individual cases.

women as fully as men for jury service and then restricted their eligibility to serve to only those women who volunteer, a restriction not placed upon men. There is no reasonable basis for this classification of a class (non-volunteers) within a class (women).

Of the cases cited in the majority opinion, all support this view except *Pay v. New York*, (1946), 332 U.S. 261, 91 L. Ed. 2043. There, no discrimination against women was found under the facts, and actually, some women were called in that case for jury duty, and one served on the jury. Here, the discrimination is patent on the face of the statute.

I approve and would follow the decision in *Ballard v. U.S.*, (1946), 329 U.S. 187, 67 S. Ct. 291, 91 L. Ed. 181.³

Concluding this point, it seems to me that if the present restriction upon female jury service were constitutional, then we must hold that the legislature could validly require all women to serve but limit male service to volunteers and thus, in effect, create an all female jury system. At least this presents the test of the present restriction.

I would find that portion of Chapter 40.01 (1), Florida Statutes, which reads as follows:

“provided, however, that the name of no female person shall be taken for jury service unless said person [fol. 75] has registered with the clerk of the circuit court her desire to be placed on the jury list.”

unconstitutional and in conflict with the “impartial jury trial” guarantees of both the Florida and Federal Constitutions and the “equal protection of the law” provision of the Federal Constitution.

For the reasons above stated, I would grant the petition for rehearing.

³ See 31 Am. Jur. 617 and 166 A.L.R. 1422.

[fol. 76]

[File endorsement omitted]

IN THE SUPREME COURT OF FLORIDA

Case No. 29,966

[Title omitted]

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed April 20, 1960

I. Notice is hereby given that Gwendolyn Hoyt, the appellant above named, hereby appeals to the Supreme Court of the United States from the Final Order and Judgment of the Supreme Court of Florida affirming the Judgment of Conviction of the Appellant Gwendolyn Hoyt for the crime of Second Degree Murder by the Criminal Court of Record of Hillsborough County, Florida, and from the Order and Judgment of the Supreme Court of Florida denying appellant's Petition for Rehearing of such Final Order entered herein on April 20, 1960.

This appeal is taken pursuant to 28 USC § 1257 (2).

Appellant was convicted of the crime of Murder in the Second Degree under § 782.04, Florida Statutes; was sentenced to serve thirty (30) years confinement at hard labor; is presently *enlarged* on bail in the sum of \$3,500.00.

II. The Clerk will please prepare a Transcript of Record in this cause for transmission to the Clerk of the Supreme Court of the United States, and include in said Transcript the following:

[fol. 77] (1) Information filed October 2, 1957 (TR 13);

(2) Jury Venire served by sheriff for November 4 through November 15, 1957 (TR 4-5);

(3) Challenge to Jury Panel filed November 8, 1957 (TR 6-10);

(4) List of jurors drawn by the Court November 15, 1957 (TR 11-12);

(5) Amended Challenge to Jury Panel filed December 2, 1957 (TR 14-18);

(6) Transcript of Hearing on Defendant's Amended Challenge to Jury Panel, held December 15, 1957, including testimony of witnesses James H. Lockhart, Katherine L. McPhillips, John C. Dekle, Order of Judge L. A. Grayson, Statement of witness Katherine L. McPhillips and certificates of Official Court Reporter (TR 20-48, inclusive);

(7) Transcript of trial other than that designated in Paragraph 6 above.

(8) Order Denying Amended Challenge to Jury Panel, December 5, 1957 (TR 49);

(9) Additional Challenge to Jury Panel filed December 12, 1957 (TR 50-52);

(10) Order Denying Additional Challenge to Jury Panel, filed December 17, 1957 (TR 53);

[fol. 78] (11) Waiver of Arraignment and Plea, December 17, 1957 (TR 54);

(12) Verdict of the Jury, December 19, 1957 (TR 600);

(13) Motion for New Trial, filed January 2, 1958 (TR 601-6);

(14) Amendment to Motion for New Trial, filed January 3, 1958 (TR 607-612);

(15) Order Denying Motion for New Trial and Amendment to Motion for New Trial, filed January 11, 1958 (TR 629);

(16) Judgment, Order and Sentence of Trial Court, January 20, 1958 (TR 630);

(17) Affidavit of Insolvency of Defendant, filed January 20, 1958 (TR 631-632);

(18) Order of Insolvency, January 20, 1958 (TR 633);

(19) Notice of Appeal to Supreme Court of Florida (TR 634-635);

(20) Assignments of Error and Grounds of Appeal in Supreme Court of Florida (TR 638-642);

(21) Opinions and Judgment of Supreme Court of Florida, filed December 2, 1959;

(22) Opinions and Judgment of Supreme Court of Florida on Petition for Rehearing, filed April 20, 1960;

(23) This Notice of Appeal to the Supreme Court of the United States, together with proof of service thereof;

[fol. 79] (24) Mandate of the Supreme Court of Florida to the Criminal Court of Record of Hillsborough County, Florida;

(25) Petition for Order of Supersedeas pending Appeal to United States Supreme Court;

(26) Order of Supersedeas pending Appeal to United States Supreme Court.

III. The following questions are presented by this Appeal:

1. Whether that portion of Section 40.01 (1) of the Florida Statutes which requires female persons to volunteer for jury service with the Clerk of Circuit Court is repugnant to and in violation of the Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States?

The Supreme Court of Florida decided in favor of the validity of such Statute.

(Florida Statutes § 40.01 (1) reads as follows:

“Qualifications and Disqualifications of Jurors

(1) Grand and petit jurors shall be taken from the male and female persons over the age of twenty-one years, who are citizens of this state, and who have resided in the state for one year and in their respective counties for six months, and who are duly qualified [fol. 80] electors of their respective counties; provided, however, that *the name of no female person shall be taken for jury service unless said person has registered with the clerk of the circuit court her desire to be placed on the jury list.*” (Emphasis ours.)

2. Whether said Florida Statutes § 40.01 (1) because of its effect in practice of excluding women from the jury which tried the defendant, a woman accused of a crime under the circumstances and raising issues in which the point of view of women was most important, is, as applied to the defendant, repugnant to and a violation of the Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States, the established facts showing that although forty per cent of the entire electorate were females, numbering 46,000 women, only 218 female electors were registered with the clerk of the circuit court?

3. Whether said Florida Statutes § 40.01 (1) as applied by the jury commissioners of Hillsborough County, Florida

against the defendant in arbitrarily and systematically excluding all women from the 2500 names placed in the jury box in 1957 and in arbitrarily and deliberately restricting the number of women to ten on the list of 10,000 persons placed in the jury box in 1956, from which the jury was drawn which tried the defendant for the murder of her husband, is repugnant to and in violation of the Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States?

[fol. 81] The Supreme Court of Florida decided in favor of the validity of such action of the jury commissioners.

Herbert B. Ehrmann, Esq., of Goulston & Storrs, 50 Federal Street, Boston 10, Massachusetts. Carl C. Durrance, Esq., 308 Tampa Street, Tampa 2, Florida, and C. J. Hardee, Jr., Esq., of Hardee & Ott, 308 Tampa Street, Tampa 2, Florida, By: s. C. J. Hardee, Jr., Attorneys for Appellant.

[fol. 82-83] PROOF OF SERVICE (omitted in printing)

[fol. 84] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 85] SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1960

No. 126 Misc.



[Title omitted]

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA
PAUPERIS—January 9, 1961

On consideration of the motion for leave to proceed herein
in forma pauperis,

It is ordered by this Court that the said motion be, and
the same is hereby, granted.

[fol. 86] SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1960

No. 126 Misc.

GWENDOLYN HOYT, Appellant,

vs.

FLORIDA

Appeal from the Supreme Court of the State of Florida.

ORDER NOTING PROBABLE JURISDICTION—January 9, 1961

The statement of jurisdiction in this case having been
submitted and considered by the Court, probable jurisdic-
tion is noted. The case is transferred to the appellate docket
as No. 639 and placed on the summary calendar.